

III. REMARKS/ARGUMENTS

A. Status of the Claims

Claims 1-3, 5-19, 27-29 and 31-41 are pending. Claims 4, 20-26, 30, and 42-46 have been previously cancelled. Applicants respectfully request reconsideration of the rejections of these claims for at least the following reasons.

B. Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, 6, 17, 18, 27-29, 32, 39 and 40 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2004/0103431 to Davenport *et al.* (“Davenport”) Specifically, the Office Action asserts that Davenport discloses all elements of these claims. Applicants respectfully disagree.

In order for a claim to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). “The identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP 2131 (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Federal Circuit recently reiterated the standard for anticipation under 35 U.S.C. § 102, stating:

We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Net Moneyin v. Verisign, 88 USPQ2d 1751, 1759 (Fed. Cir. 2008). Furthermore, a “reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking,

choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Sanofi-Synthelabo v. Apotex, Inc.*, 89 USPQ2d 1370, 1375 (Fed. Cir. 2008) (emphasis and alterations in original) (quoting *In re Arkley*, 172 USPQ 524 (CCPA 1972)).

Davenport fails to disclose all claim elements of the claims of the present application. For instance, claim 1 of the present application recites:

1. A method for providing business continuity in an enterprise comprising:
 - using at least one computer processor, collecting department information describing at least one department within the enterprise;
 - storing the department information in an electronic database;
 - using the at least one computer processor, assessing a criticality of the at least one department;
 - storing the assessment of the criticality of the at least one department in the electronic database;
 - using the at least one computer processor, developing a recovery plan for recovery from a degradation of a functionality of the at least one department, wherein the recovery plan aims to ensure the business continuity of the at least one department;
 - storing the recovery plan in the electronic database;
 - using the at least one computer processor, assessing the recovery plan;
 - storing the assessment of the recovery plan in the electronic database;
 - testing the recovery plan and recording the results of the testing;
 - storing the recorded results of the testing in the electronic database; and
 - using the at least one computer processor, providing status data from the electronic database, wherein the status data comprises at least one of a status of:
 - the collection of the department data;

the assessment of the criticality;
the development of the recovery plan; and
the testing of the recovery plan.

Appl'n, Claim 1. As is clear from the claims, and as Applicants have repeatedly submitted, the claims of the present application are all directed to providing ***business continuity*** in an enterprise. For example, the specification discloses business continuity as follows:

The present invention is a system and method for developing and implementing plans and procedures for ***providing continuity to business operations in cases of business interruption***. Such business interruption can occur due to a variety of reasons including physical facility emergency. The continuity in business operations relates at least to real estate, personnel, and critical business resources such as computers, databases and applications.

Appl'n, ¶ 0011 (emphasis added). Thus, the present invention is concerned with maintaining business continuity in the face of a business interruption caused by, for example, a facility emergency. The present invention is not concerned with an emergency plan for addressing the facility emergency.

Davenport, however, is directed to developing an emergency plan for addressing the facility emergency. Specifically, Davenport discloses “[a]n apparatus and method for emergency planning and management of a facility.” Davenport, Abstract. As such, Davenport provides the following background for its disclosure:

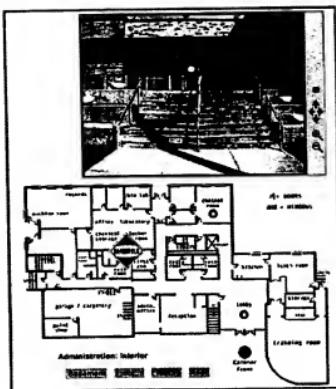
[T]here is a need to collect, coordinate and centralize information vitally needed by emergency personnel, and provide such information in a manner and form that is easy to access and use. ***Thus, emergency responders (from any responding agency or jurisdiction) can quickly review substantially all critical facility information, and thereby coordinate tactical actions between agencies and communicate status during a school emergency.***

In addition, there is an unmet need for emergency planning and management tools which *provide emergency responders with means to become familiar with a facility from an expert point of view*, as if the responders have engaged in numerous exercises at the facility, without requiring the responders to have ever visited the facility.

Id., ¶¶ 0010, 0011 (emphasis added). Consistent with these paragraphs, Davenport discloses the development of an electronic plan for a facility (*i.e.*, an electronic map with visual representations of locations within the facility) that is used to assist emergency workers in navigating a facility in the event of an emergency:

The subject application provides an apparatus for emergency planning and management of a facility. The apparatus, according to one embodiment, *includes an electronic plan of the facility and a plurality of electronic capture-and-display media*. A plurality of hyperlinks are integrated with the electronic plan. The hyperlinks are associated with respective ones of the electronic capture-and-display media. *The electronic capture-and-display media provide visual representations of respective locations at the facility*. At least one of the electronic capture-and-display media, when retrieved and shown in a viewer, includes a focused view of a point of particular interest, from an expert point of view. According to a preferred embodiment, the electronic plan and the electronic capture-and-display media are presented from the expert point of view for briefing emergency workers. Each electronic capture-and-display medium which is associated with a hyperlink in the electronic plan may be selected when the electronic plan is displayed.

Id., ¶ 12 (emphasis added). Davenport provides, in Figure 7C, an example of a display:



Clearly, Davenport is directed to assisting emergency responders with a facility emergency, not in providing “business continuity.”

With this distinction in mind, it is evident that Davenport does not disclose the elements of the claims, and the cited portions of Davenport have nothing to do with maintaining business continuity in an enterprise. For example, in support of its allegation that Davenport discloses “collecting department information describing at least one department within the enterprise,”¹ the Office Action cites Davenport’s disclosure of gathering “critical facility information.” *Id.*, ¶ 0010. This is not a disclosure of collecting department information, but rather simply gathering information -- for example, a floor plan, map, etc. -- for a facility. A facility, however, is not a department; it is a physical structure.

Similarly, there is no disclosure of “assessing a criticality of the at least one

¹ Note that independent claim 27 recites similar elements to those in independent claim 1.

department.” In alleged support, the Office Action refers to Davenport’s disclosure of a “hazard vulnerability analysis”:

The subject application also provides a method of preparing for one or more emergencies at a facility. The method, according to one embodiment, includes (a) *preparing a hazard vulnerability analysis of an emergency plan for the facility to identify shortfalls of the emergency plan, and updating the emergency plan by using the hazard vulnerability analysis*, (b) preparing an interactive multimedia survey tool comprising a plurality of electronic capture-and-display media, an electronic plan of the facility, and a plurality of hyperlinks integrated with the electronic plan, wherein the hyperlinks are associated with respective ones of the electronic capture-and-display media, the electronic capture-and-display media provides visual representations of respective locations at the facility, and at least one of the electronic capture-and-display media includes a focused view of a point of particular interest, from an expert point of view based on the hazard vulnerability analysis, and (c) using the survey tool to train emergency personnel for a selected emergency at the facility.

Id. ¶ 0022 (emphasis added). The “hazard vulnerability analysis” is further described as follows:

A hazard vulnerability analysis may be conducted as an initial step (step S11). The analysis may include a walk-through of the facility. The analysis and review of existing emergency plans form a basis for eliminating shortfalls identified, and serve as the basis for an updated emergency plan, a survey tool and/or updates to the tool.

Id. ¶ 0038. Thus, the hazard vulnerability analysis is an analysis of the existing emergency plan in the context of the facility. This is not a disclosure of “assessing the criticality of a business unit.” Indeed, nothing in this passage suggests anything having to do with the criticality of the business unit.

Moreover, there is no disclosure of “developing a recovery plan for recovery from a degradation of a functionality of the at least one department, wherein the recovery plan aims to ensure the business continuity of the at least one

department.” The Office Action cites the following in alleged support of its rejection:

For example, a multi-tiered approach (FIG. 1) towards development of an emergency plan for a facility may be adopted, including, for example, analysis, planning, and training/exercise components. The multi-tiered technique may be used to identify areas of vulnerability and reduce risks to personnel, equipment and the facility, through development of strategic initiatives.

Id., ¶ 0037. As with other elements, nothing in this passage addresses any sort of *recovery* plan, but only the development of an emergency plan, presumably in the context of assisting outsider responders.

Because there is no disclosure of a “recovery plan,” there is no disclosure of other claim elements, including “assessing the recovery plan”; “testing the recovery plan and recording the results of the testing”; and “providing status data from the electronic database, wherein the status data comprises at least one of a status of: the collection of the department data; the assessment of the criticality; the development of the recovery plan; and the testing of the recovery plan.”

Although Davenport refers to “continuity of operations,” in context it is clear that Davenport’s emergency management plan may result in continuity of operations, but the focus on the plan is to minimize dangers in the event of an emergency:

In a training/exercise phase (step S13) using the updated emergency plan and the survey tool, basic awareness and comprehensive emergency management plan are developed. Training and exercises at the facility may focus upon, for example, the incident command system, hazardous materials, weapons of mass destruction, as well as all natural and technological hazards. Tests of the updated emergency plan are accomplished through exercises, developed in conjunction with preset goals and objectives, such as preservation of life, limb and property, and continuity of operations. Thus, in the example of a school facility, students, teachers and staff can be prepared for, in

order to minimize, the dangers in the event of an emergency. Similarly, in a corporate context, analysis, planning and training provide confidence of safe and effective crisis resolution, and minimize risk of corporate liability

Id., ¶ 0040. Therefore, Davenport, like references previously cited, does not disclose the elements of the claims, and Applicants respectfully request that the rejection of independent claims 1 and 27, and all claims dependent thereon, be withdrawn.

C. Claim Rejections Under 35 U.S.C. § 103(a)

The Office Action has rejected the following dependent claims under 35 U.S.C. § 103:

- Claims 5, 19, 31 and 41, as allegedly rendered obvious by Davenport in view of U.S. Patent No. 7,305,351 to Bechhofer *et al.* (“Bechhofer”);
- Claims 7-14 and 33-36, as allegedly rendered obvious by Davenport and U.S. Patent No. 5,185,697 to Jacobs *et al.* (“Jacobs”); and
- Claims 15, 16, 37 and 38, as allegedly rendered obvious by Davenport, Jacobs and further in view of U.S. Patent Application Publication No. 2005/0114653 to Sudia.

All of these claims are dependent on either independent claim 1 or independent claim 27. As discussed above, Davenport fails to disclose all elements of these claims, and the additional references (*i.e.*, Bechhofer, Jacobs, and Sudia) do not cure the many shortcomings of Davenport. Therefore, because independent claims 1 and 27 are allowable, so are the dependent claims. *See* MPEP 2143.03 (“If an independent claim is nonobvious under 35 U.S.C 103, then any claim depending therefrom is nonobvious.”) (quoting *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)).

Therefore, Applicant respectfully requests that the rejections of these claims be withdrawn.

IV. CONCLUSION

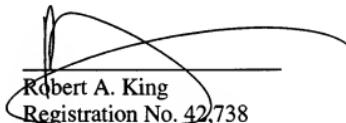
In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Dated: January 20, 2011

By:



Robert A. King
Registration No. 42,738

HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006-1109
Telephone: 202.955.1500
Facsimile: 202.778.2201